

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ANTHONY BAYAD,

Plaintiff,

v.

JOHN CHAMBERS,
PATRICIA RUSSO, ANTHONY SAVASTANO,
and CARL WIESE,

Defendants.

CIVIL ACTION
NO. 04-10468-GAO

**CISCO DEFENDANTS' OPPOSITION TO PLAINTIFF'S
"MOTION FOR DEFAULT JUDGMENT FORFEITURE BY
WRONGDOING AGAINST CHAMBERS, ET AL."**

Defendants John Chambers, Anthony Savastano, and Carl Wiese (the "Cisco defendants") respectfully oppose plaintiff's motion for a default judgment against "Defendants John Chambers, et al." The Cisco defendants interpret this reference as including each of them.

Plaintiff's latest motion requests a default for two reasons: (1) because, he claims, the Cisco defendants "have failed to answer, appear, or otherwise defend," and because they contend that the Cisco defendants have taken steps to destroy evidence. Neither claim is well founded.

As to the first claim, the Cisco defendants have indeed responded to the Complaint pursuant to Fed. R. Civ. P. 12 with their partial motion to dismiss, which is currently pending before the Court.

The claim of spoliation also fails for the simple reason that Cisco retains a copy of the document that plaintiff claims was destroyed. The email referred to in plaintiff's motion asks Cisco employees to destroy their copies of the Avaya memorandum in compliance with Cisco's established policy on use of competitive

documents, including documents created by Cisco's competitors that those competitors might consider to contain trade secret or other proprietary information. However, Cisco retained a copy of the memorandum in its files, and accordingly has not destroyed the evidence plaintiff claims is relevant to his claims. Plaintiff also has a copy of the document, in any case, as he attaches it to his motion. No relevant evidence was destroyed, and there are no grounds for any judgment against the Cisco defendants. Plaintiff's motion should be denied.

Respectfully submitted,

**JOHN CHAMBERS
ANTHONY SAVASTANO
CARL WIESE**

By their attorneys,



Mark W. Batten, BBO #566211
BINGHAM MCCUTCHEN LLP
150 Federal Street
Boston, MA 02110-1726
(617) 951-8000

Dated: May 25, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing document was served on the plaintiff pro se by first-class mail, postage prepaid, this 25th day of May, 2004.



Mark W. Batten